

SEPTEMBER 21, 1975

Calendar No.

94TH CONGRESS
1ST SESSION

S. 2003

[Report No. 94—]

IN THE SENATE OF THE UNITED STATES

JUNE 25 (legislative day, JUNE 6), 1975

Mr. TUNNEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER , 1975

Reported by Mr. _____, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To protect the constitutional rights and privacy of individuals upon whom criminal justice information has been collected and to control the collection and dissemination of criminal justice information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Criminal Justice Information Control and Protection of Privacy Act of 1975".

TITLE I—PURPOSE AND SCOPE

FINDINGS

SEC. 101. The Congress hereby finds and declares that—

(1) the responsible maintenance, use, and dissemination of criminal justice information

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~
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mation among criminal justice agencies is recognized as necessary and indispensable to effective law enforcement and criminal justice and is encouraged;

(2) the irresponsible use or dissemination of inaccurate or incomplete information, however, may, infringe on individual rights;

(3) while the enforcement of criminal laws and the regulation of criminal justice information is primarily the responsibility of State and local government, the Federal Government has a substantial and interconnected role; and

(4) this Act is based in part on the powers of the Congress—

(A) to place reasonable restrictions on Federal activities and upon State and local governments which receive Federal grants or other Federal services or benefits, and

(B) to facilitate and regulate interstate and foreign commerce.

DEFINITIONS

SEC. 102. As used in this Act the term—

(1) "automated" means utilizing electronic computers or other automatic data processing equipment as distinguished from performing operations manually;

(2) "dissemination" means any communication of information, whether orally, in writing, electronically, or by other means;

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(3) *"the administration of criminal justice" means any activity by a criminal justice agency directly involving the apprehension, detention, pretrial release, posttrial release, prosecution, defense, adjudication, or rehabilitation of accused persons or criminal offenders or the collection, storage, dissemination, or usage of criminal justice information;*

(4) *"criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so;*

(5) *"criminal justice information" means arrest record information, nonconviction record information, conviction record information, criminal history record information, and correctional and release information. The term does not include criminal justice investigative information or criminal justice intelligence information;*

(6) *"arrest record information" means notations of arrest, detention, indictment, filing of information, or other formal criminal charge on an individual which do not include the disposition arising out of that arrest, detention, indictment, information, or charge;*

(7) *"criminal history record information" means arrest record information and any disposition arising therefrom;*

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criminal history record information disclosing that a person has pleaded guilty or nolo contendere to or was convicted of any criminal offense in a court, sentencing information, or whether such plea or judgment has been modified or reversed.

(9) "nonconviction record information" means criminal history record information which is not conviction record information.

(10) "disposition" means a decision not to bring criminal charges or the fact that criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(11) "correctional and release information" means information on an individual compiled in connection with bail or pretrial or posttrial release proceedings, reports on the physical or mental condition of an alleged offender, reports on presentence investigations, reports on inmates in correctional institutions or participants in rehabilitation programs, and probation and parole reports.

(12) "criminal justice investigative information" means information associated with an identifiable individual compiled by a criminal justice agency in the course of conducting an investigation with a view to prosecution of an alleged criminal activity (including information pertaining to that criminal act derived from

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justice information nor does it include initial reports filed by a criminal justice agency describing a specific incident, not indexed or accessible by name and expressly required by State or Federal statute to be made public:

(13) "criminal justice intelligence information" means information associated with an identifiable individual compiled by a criminal justice agency in the course of conducting an investigation of an individual relating to possible future criminal activity of an individual, or relating to the reliability of such information including information derived from reports of informants, investigators, or from any type of surveillance. The term does not include criminal justice information nor does it include initial reports filed by a criminal justice agency describing a specific incident, not indexed or accessible by name and expressly required by State or Federal statute to be made public"

(14) "personal identification information" means fingerprints, photographs, voice prints, and other physical descriptive data"

(15) "judge of competent jurisdiction" means (A) a judge of a United States district court or a United States court of appeals; (B) a Justice of the Supreme Court of the United States; (C) a judge of any court of general criminal jurisdiction in a State; or (D) for

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a State who is authorized by a statute of that State to enter orders authorizing access to sealed criminal justice information;

(16) "Attorney General" means the Attorney General of the United States; and

(17) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

APPLICABILITY

SEC. 103. (a) This Act applies to criminal justice information, criminal justice investigative information, or criminal justice intelligence information maintained by a criminal justice agency—

(1) of the Federal Government,

(2) of a State or local government and funded in whole or in part by the Federal Government,

(3) which exchanges information interstate, or

(4) which exchanges information with an agency covered by paragraph (1), (2), or (3) but only to the extent of that exchange

(b) This Act applies to criminal justice information, criminal justice intelligence information, and criminal justice investigative information obtained from a foreign government or an international agency to the extent such information is commingled with information obtained from domestic sources. Steps shall be taken to assure that, to the maximum

extent feasible, whenever any information subject to this

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Act is provided to a foreign government or an international agency, such information should be used in a manner consistent with the provisions of this Act.

(c) The provisions of this Act do not apply to—

(1) original books of entry or police blotters, in whatever form, maintained by a criminal justice agency at the place of original arrest or place of detention, not indexed or accessible by name;

(2) court records of public criminal proceedings or official records of pardons or paroles or any index thereto organized and accessible by date or by docket or file number, or organized and accessible by name so long as such index contains no other criminal justice information than a cross reference to the original pardon or parole records by docket or file number;

(3) public criminal proceedings and court opinions, including published compilations thereof;

(4) records of traffic offenses maintained by departments of transportation, motor vehicles, or the equivalent, for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' licenses;

(5) records relating to violations of the Uniform Code of Military Justice but only to the extent that the information on those records is maintained, used, and disseminated solely within the Department of Defense; or

(6) statistical or analytical records or reports in

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identities are not ascertainable.

TITLE II—COLLECTION AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION, CRIMINAL JUSTICE INVESTIGATIVE IN- FORMATION, AND CRIMINAL JUSTICE IN- TELLIGENCE INFORMATION

DISSEMINATION, ACCESS, AND USE OF CRIMINAL JUSTICE INFORMATION—CRIMINAL JUSTICE AGENCIES

SEC. 201. (a) Except as otherwise provided in this Act, access to criminal justice information, criminal justice investigative information, and criminal justice intelligence information shall be limited to authorized officers or employees of criminal justice agencies, and the use of further dissemination of such information shall be limited to the administration of criminal justice.

(b)(1) The use and dissemination of criminal justice information shall be in accordance with criminal justice agency procedures reasonably designed to assure that the maintenance, use, or dissemination of arrest record information or nonconviction record information is restricted to the following activities:

(A) The screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants.

(B) The commencement of prosecution, determina-

tion of pretrial or posttrial release or detention, the

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tion of a presentence report.

(C) The supervision by a criminal justice agency of an individual who had been committed to the custody of that agency prior to the time the arrest occurred or the charge was filed.

(D) The investigation of an individual when that individual is under arrest or being detained.

(E) The development of investigative leads concerning an individual who is not under arrest or detention when there are specific and articulable facts which, taken together with rational inferences from those facts, warrant the conclusion that the individual has committed or is about to commit a criminal act and the information requested may be relevant to that act.

(F) The alerting of an official or employee of a criminal justice agency that a particular individual may present a danger to his safety.

(G) Similar activities to which information is relevant as defined in the procedures prescribed pursuant to this subsection.

(2) Such procedures shall also be reasonably designed to assure that correctional and release information is disseminated only to criminal justice agencies; or to the individual to whom the information pertains, or his attorney, where authorized by Federal or State statute, court rule, or court

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SEC. 202. *Personal identification information may be used or disseminated for any official purpose, but personal identification information which includes arrest record information or criminal history record information may be disseminated only as permitted by this Act. The term "wanted person information" means information that a person is wanted for a criminal offense and that judicial process has been issued against him, together with an appropriate description and other information which may be of assistance in locating the person or demonstrating that the person has a potential for violence. Wanted person information may be disseminated for any authorized purpose related to the administration of criminal justice. Nothing in this Act prohibits direct access by a criminal justice agency to automated wanted person information.*

DISSEMINATION, ACCESS, AND USE OF CRIMINAL JUSTICE INFORMATION—NONCRIMINAL JUSTICE AGENCIES

SEC. 203. (a) *Except as otherwise provided by this Act, conviction record information may be made available for purposes other than the administration of criminal justice only if expressly authorized by Federal or State statute.*

(b) *Arrest record information indicating that an indictment, information, or formal charge was made against an individual within twelve months prior to the date of the request for the information, or is still pending, may be made*

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criminal justice if expressly authorized by Federal or State statute.

Arrest record information made available pursuant to this subsection may be used only for the purpose for which it was made available and may not be copied or retained by the requesting agency beyond the time necessary to accomplish that purpose.

(c) When conviction record information or arrest record information is requested in accordance with subsection (a) or (b), the requesting agency or individual shall notify the individual to whom the information relates that such information about him has been requested and that he has the right to seek review of the information prior to its dissemination.

(d) Criminal justice information may be made available to qualified persons for research related to the administration of criminal justice.

(e) A criminal justice agency may disseminate criminal justice information, upon request, to officers and employees of the Immigration and Naturalization Service, consular officers, and officers and employees of the Visa Office of the Department of State, who require such information for the purpose of administering the immigration and nationality laws. The Attorney General and the Secretary of State shall adopt internal operating procedures reasonably designed to insure that arrest record information received pursuant to this subsection is used solely for the purpose of developing further investigative leads and that no decision adverse to

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an individual is based on arrest record information unless there has been a review of the decision at a supervisory level.

(f) A criminal justice agency may disseminate criminal justice information, upon request, to officers and employees of the Bureau of Alcohol, Tobacco, and Firearms, the United States Custom Service, the Internal Revenue Service, and the Office of Foreign Assets Control of the Department of the Treasury, who require such information for the purpose of administering those laws under their respective jurisdictions. The Attorney General and the Secretary of the Treasury shall adopt internal operating procedures reasonably designed to insure that arrest record information received pursuant to this subsection is used solely for the purpose of developing further investigative leads and that no decision adverse to an individual is based on arrest record information unless there has been a review of the decision at a supervisory level.

(g) The Drug Enforcement Administration of the United States Department of Justice may disseminate criminal history record information to federally registered manufacturers and distributors of controlled substances for use in connection with the enforcement of the Controlled Substances Act of 1970.

(h) Nothing in this Act prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication

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disclosure is reasonably contemporaneous with the event to which the information relates. Nor is a criminal justice agency prohibited from confirming prior arrest record information or criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal history record information disclosed is based on data excluded by section 103(c) from the application of this Act.

DISSEMINATION, ACCESS AND USE OF CRIMINAL JUSTICE INFORMATION—APPOINTMENTS AND EMPLOYMENT INVESTIGATIONS

Sec. 204. (a) A criminal justice agency may disseminate criminal justice information, whether or not sealed pursuant to section 208, criminal justice intelligence information, and criminal justice investigative information to a Federal, State, or local government official who is authorized by law to appoint or nominate judges, executive officers of law enforcement agencies or members of the Commission on Criminal Justice Information created under section 301 or any State board or agency created or designated pursuant to section 306, and to any legislative body authorized to approve such appointments or nominations. The criminal

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nominating official that he is considering that individual for such an office, or from the legislative body that the individual has been nominated for the office, and that the individual has been notified of the request for such information and has given his written consent to the release of the information.

(b) A criminal justice agency may disseminate—

(1) arrest record information compiled within twelve months prior to the date of request and criminal history record information to an agency of the Federal Government for the purpose of an employment application investigation, an employment retention investigation, or the approval of a security clearance for access to classified information, when the Federal agency requests such information as a part of a comprehensive investigation of the history and background of an individual, pursuant to an obligation to conduct such an investigation imposed by a Federal statute or Federal Executive order, and pursuant to agency regulations setting forth the nature and scope of such an investigation.

(2) arrest record information or criminal history record information that has been sealed only for the purpose of the approval of a security clearance; and

(3) criminal justice intelligence information and criminal justice investigative information for investigations concerning security clearances for access to infor-

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(c) *At the time the individual files his employment application, seeks a change of employment status, applies for a security clearance, or otherwise causes the initiation of the investigation, the individual shall be put on notice that such an investigation will be conducted and that access to this type of information will be sought in accordance with subsection (b) of this section.*

(d) *A criminal justice agency may disseminate criminal justice information, criminal justice intelligence information, and criminal justice investigative information to the Director of Central Intelligence upon the Director's being directed by the Security Council to make an investigation, only where appropriate for foreign intelligence purposes and where such investigation is pursuant to an obligation imposed by a Federal statute or Federal Executive order, and pursuant to agency regulations setting forth the nature and scope of such an investigation. The Director of Central Intelligence shall assure that information received pursuant to this subsection is used solely for proper foreign intelligence purposes. The Director of Central Intelligence shall report annually to the Congress—*

(1) *the number of requests by the Director under this subsection and the identities of the criminal justice agencies to whom such requests were made.*

(2) *the identities of the criminal justice agencies which complied with those requests, by request; and*

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and received, for each request.

(c) Any information made available pursuant to this section may be used only for the purpose for which it is made available and may not be redisseminated, copied, or retained by the requester beyond the time necessary to accomplish the purpose for which it was made available.

SECONDARY DISSEMINATION OF CRIMINAL JUSTICE INFORMATION

SEC. 205. Any agency or individual having access to, or receiving criminal justice information is prohibited, directly or through any intermediary, from disseminating such information to any individual or agency not authorized to have such information; except that correctional officials of criminal justice agencies, with the consent of an individual under their supervision to whom the information refers, may orally represent the substance of the individual's criminal history record information to prospective employers or other individuals if they believe that such representation may be helpful in obtaining employment or rehabilitation for the individual.

METHOD OF ACCESS TO CRIMINAL JUSTICE INFORMATION

SEC. 206. (a) Except as provided in section 203(d) or in subsection (b) of this section, a criminal justice agency may disseminate arrest record information or criminal history record information only if the inquiry is based upon

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arrest of an individual, such information concerning him shall be available only on the basis of positive identification of him by means of fingerprints or other reliable identification record information.

(b) Notwithstanding the provisions of subsection (a), a criminal justice agency may disseminate arrest record information and criminal history record information for criminal justice purposes where inquiries are based upon categories of offense or data elements other than personal identification information if the criminal justice agency has adopted procedures reasonably designed to insure that such information is used only for the purpose of developing investigative leads for a particular criminal offense and that the individuals to whom such information is disseminated have a need to know.

SECURITY, ACCURACY, AND UPDATING OF CRIMINAL JUSTICE INFORMATION

SEC. 207. (a) Each criminal justice agency shall adopt procedures reasonably designed at a minimum—

(1) to insure the physical security of criminal justice information, to prevent the unauthorized disclosure of the information, and to insure that the criminal justice information is currently and accurately revised to include subsequently received information and that all agencies to which such information is disseminated or from which

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(2) to insure that criminal justice agency personnel responsible for making or recording decisions relating to dispositions shall as soon as feasible report such dispositions to an appropriate agency or individual for inclusion with arrest record information to which such dispositions relate,

(3) to insure that records are maintained and kept current for at least three years with regard to--

(A) requests from any other agency or person for criminal justice information, the identity and authority of the requestor, the nature of the information provided, the nature, purpose, and disposition of the request, and pertinent dates; and

(B) the source of arrest record information and criminal history information; and

(4) to insure that criminal justice information may not be submitted, modified, updated, or removed from any criminal justice agency record or file without verification of the identity of the individual to whom the information refers and an indication of the person or agency submitting, modifying, updating, or removing the information.

(b) If the Commission on Criminal Justice Information finds that full implementation of this section is infeasible because of cost or other factors it may exempt the provisions of this section from application to information maintained prior

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(c) No agency of the Federal Government, nor the Commission on Criminal Justice Information, shall require, or attempt to require, that any State or local system of records for criminal justice information or that any telecommunications system or service used to access or disseminate such criminal justice information be a dedicated system or service. A dedicated system or service is one in which there is no sharing of physical and technical facilities or system management with noncriminal justice agencies or uses.

*SEALING AND PURGING OF CRIMINAL JUSTICE
INFORMATION*

SEC 208. (a) Each criminal justice agency shall adopt procedures providing for—

(1) the prompt sealing of criminal justice information when required by State or Federal statute, regulation, or court order;

(2) the prompt sealing of criminal justice information relating to an offense by an individual who has been free from the jurisdiction or supervision of any criminal justice agency for a period of seven years, if the individual has previously been convicted and such offense is not specifically exempted from sealing by a Federal or State statute;

(3) the sealing of nonconviction record information, and of arrest record information after a period of two years following an arrest, detention, or formal charge, whichever comes first, if no conviction of the

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individual occurred during that period, no prosecution is pending at the end of the period, and the individual is not a fugitive; and

(4) the prompt sealing of criminal history record information in any case in which a law enforcement agency has elected not to refer the case to the prosecutor or in which the prosecutor has elected not to file an information, seek an indictment or other formal criminal charge, or in which an information, indictment or other formal criminal charge has been dropped.

(b) Criminal justice information sealed pursuant to this section may be made available—

(1) in connection with research pursuant to subsection 203(d);

(2) in connection with a review by the individual or his attorney pursuant to section 209;

(3) in connection with an audit conducted pursuant to section 303 or 311;

(4) where a conviction record has been sealed and an indictment, information, or other formal criminal charge is subsequently filed against the individual; or

(5) where a criminal justice agency has obtained an access warrant from a State judge of competent jurisdiction if the information sought is in the possession of a State or local agency, or from a Federal judge of competent jurisdiction if the information sought is in

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in which probable cause has been shown that (A) such access is imperative for purposes of the criminal justice agency's responsibilities in the administration of criminal justice, and (B) the information sought is not reasonably available from any other source or through any other legal method.

(c) Access to any index of sealed criminal justice information shall be permitted only to the extent necessary to implement subsection (b). Any index of sealed criminal justice information shall consist only of personal identification information and the location of the sealed information.

ACCESS BY INDIVIDUALS TO CRIMINAL JUSTICE INFORMATION FOR PURPOSES OF CHALLENGE

SEC. 209. (a) Any individual shall, upon satisfactory verification of his identity and compliance with applicable rules or regulations, be entitled to review any arrest record information or criminal history record information concerning him maintained by any criminal justice agency and to obtain a copy of it if needed for the purpose of challenging its accuracy or completeness or the legality of its maintenance.

(b) Each criminal justice agency shall adopt and publish rules or regulations to implement this section.

(c) The final action of criminal justice agency on a request to review and challenge criminal justice information

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act expeditiously on such cases
suant to a civil action under section 307

(d) No individual who, in accord with this section, obtains information to any other person or any other public or private agency or organization

CRIMINAL JUSTICE INTELLIGENCE AND INVESTIGATIVE INFORMATION

SEC. 210. (a) Criminal justice intelligence information and criminal justice investigative information may be collected by a criminal justice agency only for official purposes. It shall be maintained in a physically secure environment and shall not be included in arrest record information or criminal record information files

(b) A criminal justice agency shall adopt internal operating procedures designed to insure—

(1) access to criminal justice intelligence information and criminal justice investigative information within the agency is limited to those officers or employees who require it for the performance of their official duties,

(2) dissemination of criminal justice intelligence information and criminal justice investigative information to other agencies is limited to those officers and employees within the agency who require it for the performance of their official duties and records are maintained for a minimum of three years regarding such dissemination, including the identity of the agency and

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of dissemination, and the purpose for which disseminated unless otherwise apparent.

(c) Criminal justice investigative and criminal justice intelligence information may be made available pursuant to Federal or State statute, or a rule or order of a court of competent jurisdiction.

(d) An assessment of criminal justice intelligence information or criminal justice investigative information may be provided to any individual when necessary to avoid possible danger to persons or property.

(e) A person is guilty of a misdemeanor if, in knowing violation of a specific duty imposed upon him as an officer or employee or former officer or employee of a governmental agency by statute, or by a regulation, rule, or order issued pursuant thereto, he discloses criminal justice intelligence information or criminal justice investigative information, to which he has or had access in his official capacity, to a person not authorized by law to receive such information. The offense shall be punishable by imprisonment not to exceed one year, a fine not to exceed \$10,000, or both.

(f) The Attorney General shall report to the Congress the internal operating procedures, and any changes in such operating procedures, proposed for the Department of Justice under subsection (b) prior to the implementation of such operating procedures.

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COMMISSION ON CRIMINAL JUSTICE INFORMATION; REGULATIONS; CIVIL REMEDIES; CRIMINAL PENALTIES

CREATION AND MEMBERSHIP

SEC. 301. (a) There is hereby created a Commission on Criminal Justice Information (hereinafter the "Commission") which shall have overall responsibility for the administration and enforcement of this Act. The Commission shall be composed of thirteen members. One of the members shall be the Attorney General and two of the members shall be designated by the President as representatives of other Federal agencies outside of the Department of Justice. One of the members shall be designated by the President on the recommendation of the Judicial Conference of the United States. The nine remaining members shall be appointed by the President with the advice and consent of the Senate. Of the nine members appointed by the President, seven shall be officials of State and local agencies from seven different States at the time of their nomination, representing to the extent possible all segments of the criminal justice system and other functions of State and local government. The two remaining Presidential appointees shall be private citizens well versed in the law of privacy, constitutional law, the Freedom of Information Act, the rights of the press under the first amendment to the Constitution, and information systems technology, and shall

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the five years preceding their appointments. Not more than seven members of the Commission shall be of the same political party.

(b) The Commission shall elect a Chairman and a Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office. The Chairman and Vice Chairman shall be elected from among the members of the Commission who are State criminal justice agency officials.

(c) The designated members of the Commission shall serve at the will of the President. The Attorney General and the appointed members shall serve for terms of five years. Any vacancy shall not affect the powers of the Commission and shall be filled in the same manner in which the original appointment or designation was made.

(d) Seven members of the Commission shall constitute a quorum for the transaction of business.

COMPENSATION OF MEMBERS

SEC. 302. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5 of the United States Code, prorated on a daily basis for each day spent in the work of the Commission, and shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when

away from his usual place of residence, in accordance with
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 section 5703 of title 5 of the United States Code.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5703 of title 5 of the United States Code.

(c) Members of the Commission shall be considered "special Government employees" within the meaning of section 202(a) of title 18.

POWERS AND DUTIES

SEC. 303. (a) For the purpose of carrying out its responsibilities under the Act, the Commission shall have authority—

(1) after consultation with representatives of criminal justice agencies subject to the Act, and after notice and hearings in accordance with the Administrative Procedures Act, to issue such regulations, interpretations and procedures as it deems necessary (A) to effectuate the provisions of this Act with respect to the interstate dissemination of information subject to the Act and (B) to govern the participation by the Attorney General, pursuant to section 308, in any system facili-

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tating the interstate dissemination of information subject to the Act;

(2) to review, prior to issuance, any regulations, interpretations, or procedures issued by any Federal, State, or local criminal justice agency regarding information subject to the Act and to delay the effective date of any provision deemed to be inconsistent with the Act until proceedings to challenge the provision can be instituted pursuant to section 307(b).

(3) to bring civil actions as provided by section 307(b);

(4) to make studies and gather data concerning the collection, maintenance, use, and dissemination of any information subject to this Act and compliance of criminal justice agencies and other agencies and individuals with the provisions of this Act;

(5) to require from each criminal justice agency information necessary to compile a directory of criminal justice information systems subject to this Act and publish annually a directory identifying all such systems and the nature, purpose, and scope of each,

(6) to conduct such audits and investigations as it may deem necessary to insure enforcement of this Act, and

(7) to delay the effective date of any provision of this Act for up to one year, provided that such delay

is necessary to prevent serious adverse effects on the administration of justice.

(b) The Commission shall report annually to the President and to the Congress with respect to compliance with this Act and concerning such recommendations as it may have for further legislation. It may submit to the President and Congress and to the chief executive of any State such interim reports and recommendations as it deems necessary

HEARINGS AND WITNESSES

SEC. 304. (a) The Commission, or, on authorization of the Commission, any three or more members, may hold such hearings and act at such times and places as necessary to carry out the provisions of this Act. Hearings shall be public except to the extent that the hearings or portions thereof are closed by the Commission in order to protect the privacy of individuals or the security of information protected by this Act.

(b) Each member of the Commission shall have the power and authority to administer oaths or take statements from witnesses under affirmation.

(c) A witness attending any session of the Commission shall be paid the same fees and mileage paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

(d) Subpoenas for the attendance and testimony of wit-

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by the Commission for the performance of its duties under this Act, may be issued in accordance with rules or procedures established by the Commission and may be served by any person designated by the Commission.

(c) In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, within the jurisdiction of which the person subpoenaed resides or is domiciled or transacts business, or has appointed an agent for the receipt of service or process, upon application of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant, and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished as contempt.

(f) Nothing in this Act prohibits a criminal justice agency from furnishing the Commission information required by it in the performance of its duties under this Act.

DIRECTOR AND STAFF

SEC. 305. There shall be a full-time staff director for the Commission who shall be appointed by majority vote of the Commission members and who shall receive compensation at the rate provided for level V of the Federal Executive Salary

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Schedule, pursuant to section 5316 of title 5 of the United

States Code. Within the limitation of appropriations and in accordance with the civil service and classification laws, the Commission may appoint such other personnel as it deems advisable, but the number of professional personnel shall at no time exceed fifty. The Commission may procure services as authorized by section 3109 of title 5 of the United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

STATE INFORMATION SYSTEMS REGULATIONS

SEC. 306. (a) The Commission shall encourage each of the States to create or designate an agency to exercise statewide authority and responsibility for the enforcement within the State of the provisions of this Act and any related State statutes, and to issue rules, regulations, and procedures, not inconsistent with this Act or regulations issued pursuant to it, regulating the maintenance, use, and dissemination of criminal justice information within the State.

(b) Where such agencies are created or designated, the Commission shall rely upon such agencies to the maximum extent possible for the enforcement of this Act within their respective States.

(c) Where any provision of this Act requires any criminal justice agency to establish procedures or issue rules or regulations, it shall be sufficient for such agencies to adopt,

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or procedures issued by any agency created or designated
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pursuant to subsection (a) of this section or by any other agency within the State authorized to issue rules, regulations, or procedures of general application, provided such rules, regulations or procedures are in compliance with this Act.

CIVIL REMEDIES

SEC. 307. (a) Any person aggrieved by a violation of this Act or regulations promulgated thereunder shall have a civil cause of action for damages or any other appropriate remedy against any person or agency responsible for such violation. An action alleging a violation of section 209 shall be available only after any administrative remedies established pursuant to that section have been exhausted.

(b) The Commission shall have a civil cause of action for declaratory judgments, cease-and-desist orders, and such other injunctive relief as may be appropriate against any criminal justice agency in order to enforce the provisions of this Act.

(c) If a defendant in an action brought under this section is an officer or employee or agency of the United States the action shall be brought in an appropriate United States district court. If the defendant or defendants in an action brought under this section are private persons or officers or employees or agencies of a State or local government, the action may be brought in an appropriate United State district court or in any other court of competent jurisdiction. The district courts of the United States shall have jurisdiction

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in controversy.

(d) In any action brought pursuant to this Act, the court may in its discretion issue an order enjoining maintenance or dissemination of information in violation of this Act or correcting records of such information or may order any other appropriate remedy, except that in an action brought pursuant to subsection (b) the court may order only declaratory or injunctive relief.

(e) In an action brought pursuant to subsection (a), any person aggrieved by a violation of this Act shall be entitled to actual and general damages but not less than liquidated damages of \$100 for each violation and reasonable attorneys' fees and other litigation costs reasonably incurred. Exemplary and punitive damages may be granted by the court in appropriate cases brought pursuant to subsection (a). Any person or agency responsible for violations of this Act shall be jointly and severally liable to the person aggrieved for damages granted pursuant to this subsection, but good faith reliance by an agency or an official or employee of such agency upon the assurance of another agency or employee that information provided the former agency or employee is maintained or disseminated in compliance with the provisions of this Act or any regulations issued thereunder shall constitute a complete defense for the former agency or employee to a civil damage action brought under

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equitable relief.

(f) For the purposes of this Act the United States shall be deemed to have consented to suit and any agency of the United States found responsible for a violation shall be liable for damages, reasonable attorney's fees, and litigation costs as provided in subsection (c).

(g) A determination by a court of a violation of internal rules, regulations, or procedures adopted pursuant to this Act is not in general a basis for excluding or suppressing evidence in any proceeding before a court. However, a court may exclude or suppress such evidence if the court determines that the violation infringes upon a constitutional right or otherwise is so serious as to require such exclusion or suppression.

POWERS AND DUTIES OF FEDERAL AGENCIES

SEC. 308. The Attorney General may—

(1) maintain fingerprint files and such other personal identification information as is necessary to assist in the identification of any person arrested, indicted, or arraigned for a violation of a State or Federal law who cannot be identified by a State agency responsible for criminal identification, and may provide, upon request, expeditious identification services to all State and Federal criminal justice agencies;

(2) maintain a system of criminal history record

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the laws of two or more States, and provide, upon request, immediate access to such records to all criminal justice agencies and to other agencies and individuals to the extent authorized by this Act;

(3) maintain an index, limited to identification characteristics and sufficient reference data to direct an inquiring agency to a relevant State criminal history record information system or to an authorized Federal system, for all adult persons arrested, indicted, or arraigned for violation of Federal or State criminal laws (excluding those lesser Federal offenses that the Commission may hereinafter specify) and whose record is contained in a State criminal history record information system or in the system described in paragraph (2) above; and

(4) provide to a designated agency in each State, and to Federal criminal justice agencies, telecommunications facilities limited to those required for access to the index defined in paragraph (3) and to the records described in paragraph (2) above.

ADMINISTRATIVE SANCTIONS

SEC. 309. If the Commission finds any agency to be in violation of the provisions of this Act, and if the agency does not take corrective action within ninety days, after written notice from the Commission, to comply with this Act or regulations issued pursuant thereto, the Law Enforcement

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terminating any funding which is being provided to the agency under title I of the Omnibus Crime Control and Safe Streets Act, and the Attorney General shall cease to serve any such agency's needs for identification services or access to criminal history record information.

CRIMINAL PENALTIES

SEC. 310. Any Government officer or employee who willfully disseminates, maintains, or uses information knowing such dissemination, maintenance, or use to be in violation of this Act shall be fined not more than \$10,000.

AUDIT AND ACCESS TO RECORDS BY THE GENERAL

ACCOUNTING OFFICE

SEC. 311. (a) The Comptroller General of the United States shall from time to time, at his own initiative or at the request of either House or any committee of the House of Representatives or the Senate or any joint committee of the two Houses, conduct audits and reviews of the activities of the Commission on Criminal Justice Information under this Act. For such purpose, the Comptroller General, or any of his duly authorized representatives, shall have access to and the right to examine all books, accounts, records, reports, files, and all other papers, things, and property of the Commission or any Federal or State agencies audited by the Commission pursuant to section 303(a)(6) of this Act, which, in the opinion of the Comptroller General, may be

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of the Commission. In the case of agencies audited by the Commission, the Comptroller General's right of access shall apply during the period of audit by the Commission and for three years thereafter.

(b) Notwithstanding any other provision of this Act, the Comptroller General's right of access to books, accounts, records, reports, and files pursuant to and for the purposes specified in subsection (a) shall include any information covered by this Act. However, no official or employee of the General Accounting Office shall disclose to any person or source outside of the General Accounting Office any such information in a manner or form which identifies directly or indirectly any individual who is the subject of such information.

PRECEDENCE OF STATE LAWS

SEC. 312. Any State law or regulation which places greater restrictions upon the maintenance, use, or dissemination of criminal justice information, criminal justice intelligence information, or criminal justice investigative information or which affords to any individuals, whether juveniles, or adults, rights of privacy or other protections greater than those set forth in this Act shall take precedence over this Act or regulations issued pursuant to this Act with respect to any maintenance, use, or dissemination of information within that State.

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SEC. 313. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated such sums as the Congress deems necessary.

SEVERABILITY

SEC. 314. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

REPEALER AND APPLICATION OF OTHER LAW

SEC. 315. (a) The second paragraph under the heading "Federal Bureau of Investigation: Salaries and Expenses" contained in the Department of Justice Appropriations Act, 1973, is repealed.

(b) Any provision of the Privacy Act of 1974 which applies to information which is regulated under this Act shall no longer apply to such information after one year after the date of the enactment of this Act.

EFFECTIVE DATE

SEC. 316. The provisions of sections 207(a)(5), of 301 through 306 and of sections 310 and 312 of this Act shall take effect upon the date of enactment and members, officers, and employees of the Commission on Criminal Justice Information may be appointed and take office at any time after that date. Provisions of the remainder of the Act shall take

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effect one year after the date of enactment: Provided, however,

That the Commission may, in accordance with section 305

(a) (7), delay the effective date of any provision for up to one additional year.

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SEPTEMBER 24, 1975

Calendar No.

94TH CONGRESS
1ST SESSION

S. 2008

[Report No. 94—]

A BILL

To protect the constitutional rights and privacy of individuals upon whom criminal justice information has been collected and to control the collection and dissemination of criminal justice information, and for other purposes.

By Mr. TUNNEY

JUNE 25 (legislative day, JUNE 6), 1975

Read twice and referred to the Committee on the Judiciary

SEPTEMBER , 1975

Reported with amendments

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